IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 4243 of 1999

Between:

Raparthi Narayana S/o Venkaiah
R/o Asifabad, Adilabad Dist. ..... PETITIONER

AND

1 The Sub-Collector & the Agency Divisional Officer,
Asifabad, Adilabad District.
2 The Mandal Revenue Officer,
Asifabad, Adilabad District.
3 The Mandal Revenue Inspector,
Asifabad, Adilabad District.
4 H. Shivaram S/o Krishna
Asifabad, Adilabad Dist.
5 K. Viswanath Rao S/o Somu
R/o Rompalli, Tiryani (M), Adilabad Dist. .....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more in the nature of Writ of Certiorari call for the records relating to the order passed by the 1st respondent vide Case No.MC/1/98, dt: 22-2-1999 and quash the same by duly declaring the order passed by the first respondent is nothing but arbitrary, illegal, without jurisdiction, violative of principles of natural justice and contrary to the provisions of A.P.Scheduled Areas Land Transfer Regulation 1959 read with amended Regulation 1/70 and A.P. Scheduled Areas Land Transfer Rules, 1969.

Counsel for the Petitioner : Mr.V.RAVI KIRAN RAO

Counsel for Respondents : G.P. FOR REVENUE

The Court made the following :

ORDER:

Challenging the resumption order passed by the 1st respondent in Case No.MC/1/98, dt: 22-2-1999 resuming the plot located opposite to Bus Stand and abutting PWD Road measuring 27 ½ x 76' into Government custody, the present writ petition is filed seeking to declare the said order as arbitrary, illegal, without jurisdiction, violative of principles of natural justice and contrary to the provisions of A.P.Scheduled Areas Land Transfer Regulation 1959 read with amended Regulation 1/70 and A.P. Scheduled Areas Land Transfer Rules, 1969.

The petitioner claims to be owner of plot No.1 along with house bearing No.6-30 measuring 40' width x 83' length towards East and 58' towards West situated at Asifabad, Adilabad district. It is stated that originally Smt.Bhainsa Dharma Bai has purchased the said plot in an open auction conducted on 5.5.1958 and from her, Smt.Uppari Pocha Bai purchased the said plot through ordinary sale deed dated 14.4.1964 and after obtaining construction permission from the Gram Panchayat vide proceedings dated 6.6.1964, Smt.Pocha Bai after dividing the plot into two equal pieces, has sold one piece i.e. front side portion measuring 21 x 12' to the petitioner herein vide registered sale deed dated 7.5.1981 and another piece of portion measuring 21 x 12' to one Korivetu Somu vide registered sale deed dated 7.5.1981. Subsequently, the said Korivetu Somu has sold the said portion of land to the petitioner vide agreement of sale dated 26.7.1983 and possession was also delivered to the petitioner. Thereafter, the petitioner also purchased the remaining plot from Smt.Pochu Bai i.e. 27 ½ x 76' by ordinary sale deed dated 10.3.1989 and after obtaining construction permission from the Gram Panchayat vide Proceedings No.144/GPA/90 dated 25.1.1991, petitioner constructed a shed and a tiled house and leased out the same to fourth respondent on a monthly rent of Rs.500/-. While the matter stood thus, one Smt.Prameela Bai filed a suit O.S.NO. 45 of 1990 on the file of the District Munsif, Asifabad against the petitioner herein for grant of perpetual injunction restraining the petitioner from interfering with her possession and enjoyment of House bearing No.6-10 measuring 40 x 100' and house No. 6-11

measuring 40 x 83' situated near Bus stand, Asifabad towards western side of her house. The petitioner states that the main dispute is with regard to boundaries of the plot and the petitioner contested the suit denying the allegations. The said suit was decreed against the petitioner. Aggrieved by the same, petitioner preferred appeal A.S.No. 28 of 1997 on the file of the Senior Civil Judge, Asifabad and the same is pending. While the matter stood thus, the fourth respondent filed a complaint in Case No.MC/1/98 before the first respondent stating that petitioner along with others entered his hotel, beat him, thrown out all the material from the hotel and evicted him forcibly. In reply thereto, petitioner filed a petition stating that he had purchased the said property from one Smt.Uppari Pochubai and leased the same to the fourth respondent and since the fourth respondent was not paying the rents, he got him vacated from the said property. The first respondent by his impugned order dated 22.2.1999 ordered for resumption of plot in question to the custody of the Government. Questioning the same, the present writ petition is filed.

The learned counsel for petitioner submit that the first respondent without considering the issue in proper perspective and without deciding who is the real owner of the property passed the impugned order directing resumption of plot in question to Government custody on the ground that the petitioner purchased the plot in question from non-tribals and any transaction between non-tribals is prohibited under A.P. Scheduled Areas Land Transfer Regulations. The learned counsel submits that the said order is passed without any notice or opportunity to the petitioner and the same is contrary to the provisions of A.P.Scheduled Areas Land Transfer Regulation 1959 read with amended Regulation 1/70 and A.P. Scheduled Areas Land Transfer Rules, 1969 and in any case, the matter is sub-judice before the Senior Civil Judge, Asifabad in A.S.No. 28 of 1997.

Having regard to the facts and circumstances, I deem it appropriate to hold that since the matter A.S.No. 28 of 1997 is pending before the Senior Civil Judge, Asifabad, the balance of convenience is in favour of petitioner to allow him to continue the possession till the disposal of the said appeal. Insofar as the claim made by fifth respondent that he is the owner of the property in question is concerned, since he has not challenged the impugned order of the first respondent in a separate proceedings, his claim cannot be accepted.

In view of the above, the impugned order passed by the first respondent in Case No.MC/1/98 dated 22.2.1999 is set aside and the writ petition is accordingly

allowed. No order as to costs.

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E.DHARMA RAO, J

Date: 14.6.2005

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To

1 The Sub-Collector & The Agency Divisional Officer,
Asifabad, Adilabad District.
2 The Mandal Revenue Officer, Asifabad, Adilabad District.
3 The Mandal Revenue Inspector, Asifabad, Adilabad District.

4 Two CCs to the G.P. for Revenue, High Court Buildings,
Hyderabad (OUT).

5 Two CD copies.